

ORIGINAL

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In re )  
 )  
Amendment of Part 74 of the )  
Commission's Rules With Regard )  
to the Instructional Television )  
Fixed Service )

MM Docket No. 93-044

RECEIVED  
SEP 28 1994  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

To: The Commission

DOCKET FILE COPY ORIGINAL

**JOINT REPLY COMMENTS**

ACS Enterprises, Inc., CableMaxx, Inc., Multimedia Development Corp., Rapid Choice TV, Inc., Superchannels of Las Vegas, Inc. and Wireless Holdings, Inc. (together, the "Coalition of Wireless Cable Operators" or "Operators"),<sup>1</sup> by counsel, hereby submits these Joint Reply Comments with respect to the Commission's Order and Further Notice of Proposed Rule Making, 9 FCC Rcd 3348 (1994) ("Notice").

**Discussion**

The Comments in this proceeding reflect near unanimity on a number of key issues intended to expedite processing of ITFS applications, restore integrity and efficiency to application processing, and ensure certainty in technical standards applicable to the ITFS service. With respect to application processing

---

<sup>1</sup> As stated in the Operators' Joint Comments in this proceeding, filed August 29, 1994, the Operators collectively serve more than 100,000 wireless cable subscribers, and are rapidly expanding the subscriber base through internal growth of existing markets, development of new markets and acquisition of systems. In addition to its participation in these Joint Reply Comments, Wireless Holdings, Inc. is also submitting separate Reply Comments in this proceeding addressing certain technical issues.

No. of Copies rec'd  
List A B C D E

045

issues, commenters generally supported the use of filing windows for ITFS applications, so long as the windows are opened on a frequent basis.<sup>2</sup> Commenters also urged the Commission to require greater financial disclosure to support an applicant's "reasonable assurance" certification where the financial source is the proposed lessee of excess transmission capacity.<sup>3</sup> Several wireless cable operators and all of the ITFS parties commenting in this proceeding agreed that requiring ITFS receive sites to be accredited would be counterproductive to the educational objectives upon which the ITFS service is predicated.<sup>4</sup>

Commenters almost universally opposed caps on the number of applications that a single entity could file or sponsor during a given window because such limits would not be effective at deterring the filing of speculative applications and would

---

<sup>2</sup> See, e.g., Joint Comments at p. 4 (proposing that windows be opened at least four times a year); Comments of the Wireless Cable Association International, Inc. at pp. 7-8 ("WCA Comments") (same); Comments of the Educational Parties ("EP Comments") at p. 9 (same); Comments of Heartland Wireless Communications, Inc. ("Heartland Comments") at pp. 2-3 (same); Joint Comments of North American Catholic Educational Programming Foundation, Inc., Network for Instructional TV, Inc., and Shekinah Network ("National Comments") at pp. 8-9 (proposing "frequent" windows).

<sup>3</sup> See, e.g., Joint Comments at pp. 6-8; National Comments at pp. 2-3; WCA Comments at pp. 21-22; CTW Comments at p. 4. Cf. Heartland Comments at pp. 9-10 (proposing increased financial disclosure for ITFS applications sponsored by "problem" operators and exemptions for certain publicly-traded operators); Comments of CAI Wireless, Inc. ("CAI Comments") at pp. 3-4 (same); Comments of Hispanic Information and Telecommunications Network, Inc. ("HITN Comments") at p. 4 (opposing changes to existing financial disclosure requirements).

<sup>4</sup> See, e.g., Joint Comments at p. 18; National Comments at pp. 6-7; EP Comments at p. 24; HITN Comments at pp. 10-11.

unnecessarily delay major changes to existing systems.<sup>5</sup> The imposition of caps not only would be difficult to police (and thus subject to abuse), but would also be unnecessary if the Commission establishes filing windows at least four times a year. Further, the other proposals advocated by the commenters to add integrity to the Commission's application rules would be sufficient to deter application dumping. These proposals include the submission of more detailed financial disclosures and withholding action on extension requests until after interested parties have had an opportunity to oppose the request.

Commenters, however, diverged in their views on the Commission's proposal to adopt a uniform 35-mile limit for receive site protection. Some of the commenters favor the adoption of a rigid 35-mile limit,<sup>6</sup> while others, including the Operators, advocated a more flexible standard for receive site protection.<sup>7</sup> The Operators urged adoption of rules that would permit ITFS licensees leasing excess capacity to wireless cable operators to enjoy receive-site protection for all sites located within the so-

---

<sup>5</sup> See, e.g., Joint Comments at pp. 8-9; National Comments at pp. 5-6; Comments of RuralVision South, Inc. and RuralVision Central, Inc. at pp. 4-6; Comments of National Micro Vision Systems, Inc. at p. 2. Cf. Comments of Central Texas Wireless TV, Inc. ("CTW Comments") at pp. 4-6 (proposing strict limits on the filing of applications by non-local ITFS applicants and less strict limits on the filing of applications sponsored by wireless cable operators).

<sup>6</sup> See, e.g., CTW Comments at p. 9; Comments of Vermont Wireless Co-operative.

<sup>7</sup> See, e.g., Joint Comments at p. 14; EP Comments at pp. 19-20; CAI Comments at p. 4.

called wireless cable protected service area, and also those receive sites located outside the protected service area where the applicant demonstrated its ability to provide adequate service.<sup>8</sup> WCA, and others, take a similar position. See, e.g., WCA Comments at pp. 37-39. Because this standard would add certainty to the Commission's processes and at the same time afford interference protection to those sites capable of receiving a signal, the Operators urge adoption of its proposal, as further discussed in the Joint Comments.

#### Conclusion

The Comments in this proceeding reflect universal agreement that changes to existing rules and processes are necessary, and that such changes should be implemented as soon as possible. The

---

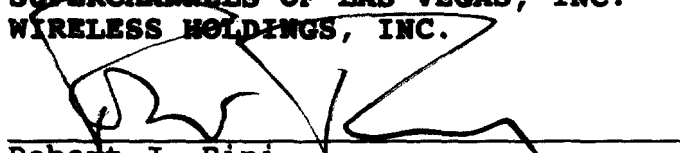
<sup>8</sup> In this regard, the Operators reiterated their support for a redefinition of the protected service area to correspond to the area capable of being served, to be calculated according to the height and power of the station. See Joint Comments at pp. 13-14. See also WCA Comments at pp. 9-18.

Comments also reflect widespread agreement on many if not most of the changes proposed by the Commission. The Operators join the other commenters in calling for prompt implementation of the proposals discussed herein.


Respectfully submitted,

ACS ENTERPRISES, INC.  
CABLEMAXX, INC.  
MULTIMEDIA DEVELOPMENT CORP.  
RAPID CHOICE TV, INC.  
SUPERCANNELS OF LAS VEGAS, INC.  
WIRELESS HOLDINGS, INC.

By:

  
Robert J. Rini

By:

  
Stephen E. Coran

Rini & Coran, P.C.  
Dupont Circle Building  
1350 Connecticut Avenue, N.W.  
Suite 900  
Washington, D.C. 20036  
(202) 296-2007

September 28, 1994

Their Attorneys

sec-1/reply

**CERTIFICATE OF SERVICE**

I, Victor Onyeoziri, a legal secretary with the law firm of Rini & Coran, P.C., do hereby certify that the foregoing "Joint Reply Comments" was served on the below listed parties by First Class U.S. Mail, this 28th day of September, 1994:

Todd D. Gray, Esq.  
Dow, Lohnes & Albertson  
1255 Twenty-third Street, N.W.  
Suite 500  
Washington, D.C. 20037  
(Counsel for The Educational Parties)

Benjamin Perez, Esq.  
1801 Columbia Road, N.W.  
Suite 101  
Washington, D.C. 20009  
(Counsel for Hispanic Information and  
Telecommunications Network, Inc.)

Mr. John Primeau  
President  
North American Educational Programming Foundation, Inc.  
1223 Mineral Spring Avenue  
N. Providence, RI 02904

Mr. Thomas A. Pyle  
Executive Director/CEO  
Network for Instructional TV, Inc.  
11490 Commerce Park Drive  
Suite 110  
Reston, VA 22091

Mr. Chuck McKee  
President  
Shekinah Network  
14875 Powerline Road  
Atascadero, California 93422

Mr. Michael Lynch  
President  
National Micro Vision Systems, Inc.  
17138 Von Karman Avenue  
Irvine, CA 92714

Marci E. Greenstein, Esq.  
Lukas, McGowan, Nace & Gutierrez, Chartered  
1111 19th Street, N.W.  
Twelfth Floor  
Washington, D.C. 20036  
(Counsel for Pioneer Telephone Cooperative, Inc.)

Mr. Frank M. Shalman, Sr.  
President  
Vermont Wireless Co-Operative  
P. O. Box 268  
East Corinth, Vermont 05040

Frederick M. Joyce, Esq.  
Christine McLaughlin, Esq.  
Joyce & Jacobs  
2300 M Street, N.W.  
Suite 130  
Washington, DC 20037  
(Counsel for RuralVision South, Inc. and  
RuralVision Central, Inc.)

Caressa D. Bennet, Esq.  
1831 Ontario Place, N.W.  
Suite 200  
Washington, DC 20009  
(Counsel for Central Texas Wireless TV, Inc.)

Gerald Stevens-Kittner, Esq.  
Peter H. Doyle, Esq.  
Arter & Hadden  
1801 K street, N.W.  
Suite 400  
Washington, D.C. 20006  
(Counsel for Heartland Wireless Communications, Inc.  
and CAI Wireless Systems, Inc.)

Mr. William F. Hammett  
Hammett & Edison, Inc.  
P. O. Box 280068  
San Francisco, California 94128-0068

Mr. T. Lauriston Hardin, P.E.  
President  
Hardin and Associates, Inc.  
5750 Chesapeake Blvd., Suite 303  
Norfolk, VA 23513-5325

Paul J. Sinderbrand, Esq.  
Sinderbrand & Alexander  
888 16th Street, N.W.  
Suite 610  
Washington, D.C. 20006-4103  
(Counsel for The Wireless Cable Association  
International, Inc.)

William D. Freedman, Esq.  
Gurman, Kurtis, Blask & Freedman, Chartered  
1400 16th Street, N.W.  
Suite 500  
Washington, D.C. 20036  
(Counsel for American Telecasting, Inc.)



Victor Onyeoziri